

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN DEBBY BARRETT**, on January 22, 2003 at 8 A.M., in Room 455 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Debby Barrett, Chairman (R)  
Rep. Dee Brown, Vice Chairman (R)  
Rep. Larry Jent, Vice Chairman (D)  
Rep. Norman Ballantyne (D)  
Rep. Arlene Becker (D)  
Rep. Sue Dickenson (D)  
Rep. Carol Gibson (D)  
Rep. Daniel S. Hurwitz (R)  
Rep. Hal Jacobson (D)  
Rep. Larry Lehman (R)  
Rep. Ralph Lenhart (D)  
Rep. Alan Olson (R)  
Rep. Bernie Olson (R)  
Rep. Don Roberts (R)  
Rep. Clarice Schrumpf (R)  
Rep. Frank Smith (D)  
Rep. Pat Wagman (R)  
Rep. Jonathan Windy Boy (D)  
Rep. Cindy Younkin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Sheri Heffelfinger, Legislative Branch  
Joan Reiman, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed. Time counters follow the testimony.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 143, 1/6/2003; HB 154,  
1/6/2003; HB 213, 1/6/2003  
Executive Action: None

**HEARING ON HB 213****Sponsor:** REP. DAVE GALLIK, HD 52, HELENA**Opening Statement by Sponsor:**

REP. GALLIK said this bill will be general revisions to Public Employees Retirement System (PERS). There will be a lot of amendments, to coordinate with REP. FRANK SMITH's HB 44 to allow purchase of military time under PERS. He gave out a copy of an amendment that REP. JACOBSON will sponsor.

**EXHIBIT**(sth13a01)*{Tape: 1; Side: A; Approx. Time Counter: 0 - 3.9}***Informational Testimony:**

Melanie Symons, Legal Counsel, Public Employees Retirement Board (PERB), testified that changes in the law are to keep things consistent among the eight different retirement systems. She summarized changes and distributed an exhibit outlining them. Under a new Defined Contribution Plan, members can now buy reserve military time as well as active duty. There is a new Deferred Retirement Option Plan (DROP) which policemen can use, to keep working out of retirement. The new section in the bill takes judges' retirement out of all small systems and puts it under one law. All members have twelve months to decide which plan they want, Defined Contribution Plan or Defined Benefits Plan. The only significant change to law is regarding long-term disability benefits, she summarized.

**EXHIBIT**(sth13a02)*{Tape: 1; Side: A; Approx. Time Counter: 3.9 - 17.6}***Proponents' Testimony:** None**Opponents' Testimony:** None**Questions from Committee Members and Responses:**

REP. DEE BROWN asked Ms. Symons if, under the new section, a person could work two years in one system and three years in another then join the two together. Ms. Symons deferred to Kelly Jenkins, Legal Counsel, PERB, who said they can buy the service immediately upon transfer, with no vesting requirement. REP. BROWN asked if there was ever an occasion when an employee jumped

around in retirement systems. **Mr. Jenkins** said he could not remember it happening, but said they could do that since employees are paying the actuarial costs of their benefits.

**REP. ROBERTS** asked whether, if members went on disability after age 60, they had to drop the retirement benefit. **Ms. Symons** replied that is so, but the disability benefit would be the same as their regular benefit amount. It will depend on each person's account, she added.

**REP. WAGMAN** asked Sheri Heffelfinger, Legislative Branch, how long it would take the average legislator to read and figure out this large bill. **Ms. Heffelfinger** said the bill is long because it is a housekeeping bill to clean up Montana Codes Annotated (MCA), but "they've done a good job," she concluded.

**REP. DICKENSON** asked **Ms. Symons** how members would choose one plan versus another. **Ms. Symons** said in the Defined Benefit Plan, one receives benefits based on a formula involving years of service and salary, with a 3% GABA per year. With the Defined Contribution Plan, in contrast, they don't receive a specific amount; if they invest wisely, they can get more. **REP. DICKENSON** asked if that was new. **Ms. Symons** replied that it started July 1, 2002. **REP. BALLANTYNE** asked if someone starts in the Defined Contribution Plan at first, could they opt out of it later. **Ms. Symons** said neither plan lets one opt out unless they terminate their retirement. **REP. BERNIE OLSON** asked her if the limit of years that may be purchased is five. She said in the Teachers' Retirement System (TRS) teachers may buy more than five years.

*{Tape: 1; Side: A; Approx. Time Counter: 18.2 - 30}*

**Closing by Sponsor:**

**REP. GALLIK** said he understands it is a daunting task to read and understand the bill, and he thanked PERS staff for explaining it.

*{Tape: 1; Side: A; Approx. Time Counter: 30 - 33}*

**HEARING ON HB 154**

**Sponsor:** **REP. RALPH LENHART, HD 2, Glendive**

**Opening Statement by Sponsor:**

**REP. LENHART** said this is a general housekeeping bill involving Teachers' Retirement System (TRS). An amendment prepared by

legislative staff was offered. The bill has no fiscal impact, but is necessary to comply with the Federal Tax Act of 2002. It takes advantage of federal law changes to allow TRS members to invest with tax-deferred money, and allows rollovers from other plans.

***{Tape: 1; Side: A; Approx. Time Counter: 34.9 - 39.8}***

**EXHIBIT (sth13a03)**

**Proponents' Testimony:**

**David Senn, Executive Director, TRS**, said this bill allows more portability of plans and also that limits have been increased. A new requirement for employers is a monthly report but schools must now report to TRS monthly anyway, he said. He offered suggested amendments.

**EXHIBIT (sth13a04)**

**EXHIBIT (sth13a05)**

***{Tape: 1; Side: A; Approx. Time Counter: 34.9 - 48.6}***

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. BROWN** asked Mr. Senn about the volume of paperwork required for monthly reports from schools, and if reporting could be less often. **Mr. Senn** said it would be easier to keep it monthly, as schools now report electronically, so they would not have to re-format. He said 100 employers use the TRS internet reporting option. **REP. ALAN OLSON** asked him to explain Amendment 5. **Mr. Senn** said if members started PERS then go into TRS, they can combine systems to get the required three full years to enroll. For a part-time employee, TRS must annualize their salary to get the three years. **REP. LEHMAN** asked about Section 7. **Mr. Senn** explained that the life-only annuity requires not only signatures of both member and spouse, but now also requires notarization of the signatures. **REP. LEHMAN** asked if there would be a problem with ex-spouses not being willing to sign. **Mr. Senn** said they have Family Law Orders (FLO) which govern the division of family property; and that the courts will be on their side in splitting property equitably. **REP. DICKENSON** asked for clarification in Section 4. **Mr. Senn** related that the qualified excess benefit arrangement is when what the employee earns under state law is greater than the federal government allows. It has different tax

consequences and "is a headache," he remarked. **REP. JACOBSON** asked when submission of annual reports was changed to a two-year report. **Mr. Senn** was not sure, but said all reports are published voluntarily on their web page annually.

**{Tape: 1; Side: A; Approx. Time Counter: 48.8 - 60}**

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 1.4}**

**Closing by Sponsor:**

**REP. LENHART** said many amendments will be necessary to comply with the IRS, which governs these plans. He said it is a good bill.

**{Tape: 1; Side: B; Approx. Time Counter: 1.4 - 2}**

**HEARING ON HB 143**

**Sponsor:** **REP. CAROL LAMBERT, HD 1, Hammond**

**Opening Statement by Sponsor:**

**REP. LAMBERT** said this bill will limit the liability of the PERB if there is incorrect reporting; it is a housekeeping bill with no fiscal note. She said she sat on the Board for ten years while the Defined Contribution Plan was legislated and is proud of the integrity of the PERB.

**{Tape: 1; Side: B; Approx. Time Counter: 2.4 - 5.7}**

**Proponents' Testimony:**

**Kelly Jenkins, Legal Counsel, PERB**, stated that this bill will need a 2/3 vote but its effect is not dramatic. He said the Board is merely penny pinching in saving administrative costs. The core issue is, they will not be responsible for the acts of those reporting. If the reports are late, it is as if the money is late, and may affect dividends. PERB is not trying to avoid their own responsibility, he said, and whomever's fault it is should pay the damages. The Board has nowhere to get money to pay off a lawsuit; it would have to come from members' benefits.

**Glen Leavitt, Director of Benefits, Montana University System**, testified that he supports the bill.

**{Tape: 1; Side: B; Approx. Time Counter: 5.7 - 14.1}**

**Opponents' Testimony:**

**Travis Ahner, Montana Trial Lawyers Association (MTLA)**, testified he opposes the bill because it is redundant, and plan fiduciaries are not defined in Title 19.

*{Tape: 1; Side: B; Approx. Time Counter: 14.1 - 15.7}*

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. BECKER** asked Mr. Jenkins if Board members are included in the definition of fiduciaries. **Mr. Jenkins** said the "discretionary authority under the plan" is not the individual Board members, but individual members have been sued, so this bill is necessary to protect them. **REP. BECKER** then asked who would be responsible if a member invests unwisely under a Defined Contribution Plan. **Mr. Jenkins** likened the Defined Contribution Plan to a 401-k or an IRA-type account; the member controls it. PERS does not tell them how to invest.

**REP. BROWN** asked Mr. Jenkins to address Mr. Ahner's redundancy charges. **Mr. Jenkins** said Sections 3 and 5 get at similar issues, but PERS did it out of caution and to make it clearer.

**REP. BROWN** asked if this bill is here because they no longer have just one retirement plan. **Mr. Jenkins** said that was right; the 1999 Session passed the Defined Contribution Plan, which started in 2002. **REP. BERNIE OLSON** asked Mr. Ahner why the MTLA would be against this bill. **Mr. Ahner** referred to a previous bill heard in this committee to clean up MCA of unnecessary legislation.

**REP. LEHMAN** asked Mr. Jenkins if volunteer firefighters are eligible for PERS. **Mr. Jenkins** said volunteers were not eligible for it but that they have a Firefighters Fund they can join.

**REP. LEHMAN** asked if Board members are paid. **Mr. Jenkins** said their stipend is \$50 per day and they usually only meet two days per month totaling \$100 per month.

**REP. ALAN OLSON** asked if PERS audited employer reports. **Mr. Jenkins** said not per se, but that internal controls have the same effect. He admitted that PERS is considering auditing for compliance. **REP. OLSON** asked if they carry errors and omissions insurance. **Mr. Jenkins** said they did not because it is expensive, and that they have insurance with the Risk Management and Tort Defense Division covering lawsuits. He added that the more insurance one may have, the more one is a target for lawsuits.

**REP. OLSON** asked if it would not be better, if sued, to have it covered under error insurance rather than under the Plan. **Mr. Jenkins** said that is not easy to answer. Fees could be 1/2 million for \$5 million of insurance, for an error that hasn't happened yet. The cost of insurance is not worth the value of coverage obtained, he estimated. **REP. OLSON** said schools carry errors insurance. He asked if PERB is under a civil rights suit.

**REP. WAGMAN** made a point of order. **REP. OLSON** continued asking **Mr. Jenkins** if there is a class action suit against PERS because of a change in the plan. **Mr. Jenkins** replied, "Yes, but it's not a class action - it's a constitutional interpretation question." **REP. OLSON** asked if employees could opt out of the Plan because the Board would not back up employers. **Mr. Jenkins** said the bill does not say anything different than the current law about that. All they are trying to do is state the rules succinctly in one place, he said, and there would not be an impairment of members' control of their money.

**REP. BECKER** asked who would be responsible if all options under Defined Contribution Plan offered were bad. **Mr. Jenkins** said theoretically that could happen, but it is not a real threat because they utilize so many advice services. The Plan offers 19 options and they are "all nice, safe funds," he stated. **REP. JENT** asked him if the Employee Retirement and Investment Security Act (ERISA) applied to states. **Mr. Jenkins** stated that it did not. **REP. JENT** asked him if under the Internal Revenue Service (IRS) laws, his plan is not ERISA-driven. He explained that government and church retirement plans are subject to equivalent provisions which are not as stringent.

***{Tape: 1; Side: B; Approx. Time Counter: 15.7 - 44.6}***

**Closing by Sponsor:**

**REP. LAMBERT** echoed that this is a housekeeping bill and asked that members do pass.

***{Tape: 1; Side: B; Approx. Time Counter: 44.6 - 44.7}***

**ADJOURNMENT**

Adjournment: 9:45 A.M.

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REP. DEBBY BARRETT, Chairman

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JOAN REIMAN, Secretary

DB/JR

**EXHIBIT (sth13aad)**